IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

Bail Appl..No. 4643 of 2007()

CRIME NO. 78/07 OF PULINKUNNU POLICE STATION
CRMP.1850/2007 of DISTRICT COURT, ALAPPUZHA

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PETITIONER/ACCUSED NO.3

SUNILKUMAR, AGED 39 YEARS,
S/O YASODHARAN, 'INDRAPRASTHAM',
PUNNAPPARA, ALAPPUZHA.

BY ADV. SRI.GRASHIOUS KURIAKOSE
SRI.B.PRAMOD

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 4643 of 2007

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Dated this the 2nd day of August, 2007

O R D E R

Application for anticipatory bail. The petitioner is the third accused. Altogether there are four accused person. The crime has been registered on the basis of a private complaint filed before the learned Magistrate and referred by the learned Magistrate to the police under Section 156(3) Cr.P.C. The property in dispute belonged originally to the grandmother of the defacto complainant. The grandmother had executed a Gift Deed in favour of the brother of the defacto complainant. That property was being managed under a Power of Attorney by the husband of the first accused. While so, in 1983, the husband of the first accused executed a document of conveyance in his capacity as the Power of Attorney of the brother of the defacto complainant conveying the title to the defacto complainant. Thus from 1983 the defacto complainant is the title holder keeping possession.

2. The defacto complainant is employed in the Army. He is not residing at his native place. He came to know that in 2005 a

forged document purportedly executed by him has been brought into existence in favour of the first accused, who is the wife of the Power of Attorney holder of the brother of the defacto complainant. That person expired in the year 1991. The second accused is the son of the first accused and the petitioner is the employee of the second accused. 4th accused is allegedly the unidentified person who had executed the document personating himself to be the defacto complainant.

3. The allegation against the petitioner is only that he had attested the signature of the executant in the document of conveyance. Investigation is in progress. The petitioner apprehends imminent arrest.

4. The learned counsel for the petitioner submits that even if the entire allegations were accepted, the petitioner has no culpable or contumacious intention. Admittedly the defacto complainant is not a local person. He is not residing in Kerala. Accused 1 and 2 are close relatives of the defacto complainant and the petitioner had attested the signature of the executant honestly believing that the executant was the defacto complainant. As the petitioner did not have personal acquaintance with the defacto complainant he had no reason to suspect the statement of accused 1 and 2 that the executant is the defacto complainant. In these circumstances the petitioner does not deserve to endure the trauma of arrest and detention.

He is willing to co-operate with the Investigator and make a clean breast of what had happened.

5. Notice was given. The learned Prosecutor does not raise any objection. Appropriate and strict conditions may be imposed, it is prayed. The learned Prosecutor submits that the only apprehension of the Investigator is that the grant of bail/anticipatory bail to the petitioner/A3 should not be construed as a ground justifying the grant of such relief in favour of accused 1, 2 or 4. Needless to say, the precise nature of the allegations in each case has to be considered by a court at the time of grant of bail/anticipatory bail and there is no reason to assume that any court without considering the different nature of allegations against the petitioners would consider the grant of bail/anticipatory bail.

6. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 10.8.2007 at 11 a.m. The learned Magistrate shall release the petitioner on regular bail on condition that he executes a bond for Rs.25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 11.8.07, 12.8.07 and 11.8.2007 and thereafter on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months and subsequently as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 10.8.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with him in accordance with law.

(d) If the petitioner were arrested prior to his surrender on 10.8.2007 as directed in clause (1) above, he shall be released on bail on his executing a bond for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate on 10.8.2007.

(R. BASANT)
Judge

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